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Remarks

Claims 1 - 6 remain pending in the application.

Double Patenting

Claims 1 - 6 are subject to nonstatutory double patenting rejections.

Appropriate terminal disclaimers for U.S. Patent 6,726,528, U.S. Patent 6,884,150, U.S. Patent 6,485,354 and U.S. Patent 6,986,701 are filed with this response.

The Office Action rejects claims 1-3 and 6 under nonstatutory double patenting in view of "co-pending" patent application 10/303,621. However, patent application 10/303,621 is now U.S. patent 6,695,681. Therefore, a terminal disclaimer for U.S. patent 6,695,681 is filed with this response.

The Office Action rejects claims 1-3 and 6 under nonstatutory double patenting in view of "co-pending" patent application 09/970,252. However, patent application 09/970,252 is now U.S. patent 6,739,945. Therefore, a terminal disclaimer for U.S. patent 6,739,945 is filed with this response.

For the reasons stated above, withdrawal of these rejections are respectfully requested.

Claim Rejections - 35 U.S.C. § 103

The Office Action rejects claims 1, 2, 3 and 6 as obvious over Barbour, Polishing Pad Sensor with Damping Pad, U.S. Patent 6,884,150 (Apr. 26, 2005) in view of Swedek et al., Endpoint Detection with Light Beams of Different Wavelengths,

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U.S. Patent 6,190,234 (Feb. 20, 2001). The Office Action also rejects claims 4 and 5 as obvious over Barbour in view of Johansson et al., Combined Eddy Current Sensing and Optical Monitoring for Chemical Mechanical Polishing, U.S. Patent Publication 2005/0101224 (May 12, 2005).

Barbour is not prior art. 35 U.S.C §103(c) provides that subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. (See also MPEP section 706.02(1)(1)).

Barbour '150 and the present Application were commonly owned at the time of this invention by Strasbaugh. Both the present application and Barbour were subject to an obligatory assignment at the time this invention was made. The inventors of the present Application were employees of Strasbaugh at the time of invention as evidenced by an assignment of this Application to Strasbaugh submitted to the USPTO on May 3, 2004. Barbour, U.S. Patent 6,884,150, did not issue until April 26, 2005 which was after the present Application was filed on January 8, 2004. The Barbour '150 Application was published on November 20, 2003, which is less than one year before the present Application was filed. Because the present Application and Barbour were commonly owned at the time of invention and subject to an obligatory assignment and because Barbour '150 patent publication was published for less than 1 year prior to the present Application, Barbour '150 should be disqualified as

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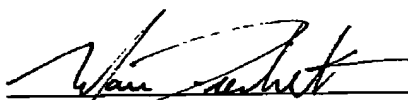
prior art. For at least these reasons, withdrawal of this rejection is respectfully requested.

Conclusion

This response has addressed all of the Examiner's grounds for rejection. The rejections based on prior art have been traversed. Reconsideration of the rejections and allowance of the claims is requested.

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By:


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